Supreme Court, U. S.
FILED
DEC 18 1979
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in the

# Supreme Court

of the

# United States

OCTOBER TERM, 1979

NO. 79-948

NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation; FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee,

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, a municipal corporation; H. LAYTON MAINGUY, as Mayor, and THEODORE H. BEST, JIMMY D. YATES, WILLIAM J. BOYE, WILLIAM L. NASH and H. KENNETH POWELL, as Councilmen,

*Appellees.*

## ON APPEAL FROM THE SUPREME COURT OF FLORIDA

## JURISDICTIONAL STATEMENT

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DECEMBER 17, 1979

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**NO._____**

NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation; FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, a municipal corporation; H. LAYTON MAINGUY as Mayor, and THEODORE H. BEST, JIMMY D. YATES, WILLIAM J. BOYE, WILLIAM L. NASH and H. KENNETH POWELL, as Councilmen,

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**ON APPEAL FROM THE SUPREME COURT OF FLORIDA**

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## JURISDICTIONAL STATEMENT

## OPINION BELOW

The opinion of the Supreme Court of Florida, which appears in the Appendix hereto, App. 1, infra, is reported at 374 So.2d 461 (1979).

The denial of Appellants' Petition for Rehearing, which appears in the Appendix hereto, App. 13, infra, is not yet reported in the Southern Reporter.

## JURISDICTIONAL STATEMENT

Appellants, North Ridge General Hospital, Inc., a Florida corporation, Fort Lauderdale Health Complex Ltd., a limited partnership, and Richard K. Inglis, Trustee, appeal from the Final Judgment of the Supreme Court of Florida, dated June 7, 1979, Rehearing Denied September 21, 1979, holding that Chapter 75-452, Laws of Florida, a Special Act, annexing Appellants' property to the Appellee, City of Oakland Park, a Florida municipal corporation, was not violative of Appellants' equal protection rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States.



## JURISDICTION

The judgment of the Supreme Court of Florida holding that Chapter 75-452, Laws of Florida, a Special Act, annexing Appellants' property to the Appellee, City of Oakland Park, was not violative of Appellants' Fourteenth Amendment equal protection rights was entered June 7, 1979. A Petition for Rehearing was denied on September 21, 1979. (App. 10-12, infra)

A supplementary notice of appeal to this Court was duly filed in the Supreme Court of Florida on November 28, 1979. (App. 13, infra)

This appeal is being docketed in the Court within 90 days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

## QUESTION PRESENTED

Whether it is constitutionally permissible for a State Legislature to annex property to a municipality by a Special Act subsequent to enactment of a general law establishing general and uniform standards and procedures applicable throughout the State for adjusting municipal boundaries, whereby the property owners of the annexed area were provided the following protections:

(1) The right to vote for or against annexation of his property,

(2) The right to petition a court to review a municipal annexation ordinance prior to the annexation,

(3) The right to be assured of delivery of the proposed municipal services,

and, the Special Act provided none of these protections?



## CONSTITUTIONAL PROVISIONS AND STATUTES OF FLORIDA

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### Fourteenth Amendment, United States Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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### Chapter 75-452, Laws of Florida, a Special Act

CHAPTER 75-452

House Bill No. 2177

AN ACT relating to the City of Oakland Park, Broward County; extending and enlarging the corporate limits of the City of Oakland Park by including previously unincorporated land into said corporate limits; providing an effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. The present corporate limits of the City of Oakland Park, Broward County, are hereby extended and enlarged so as to include, in addition to the territory presently within its corporate limits, the following described lands and territory, to wit:

That certain unincorporated areas commencing on the east right-of-way line of North Dixie Highway at the present corporate limits (in the vicinity of Northeast 52nd Street or approximately 1400 feet south of Northeast 56th Street) northerly along this right-of-way line to the north right-of-way of Northeast 62nd Street, westerly to the west right-of-way line of Northeast 9th Avenue, southerly to a point 100 feet north of the north right-of-way line of Northeast 58th Court, easterly 400 feet, then southerly to the north right-of-way line of Northeast 58th Street, westerly to the west right-of-way line on Northeast 9th Avenue, southerly to the north right-of-way of Northeast 56th Street, southerly and easterly along the present corporate limits of the City of Oakland Park to the point of beginning together with the west 330 feet of the north 330 feet of the Northwest ¼ of the Northwest ¼ of Section 14 all lying in Township 49 South, Range 42 East and being situated in Broward County, Florida.

Section 2. This act shall take effect upon becoming a law.



Became a law without the Governor's approval.

Filed in Office Secretary of State July 5, 1975.

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**Section 171.021 (1)(2)(3)(4), Fla.Stat., (1977)**

**171.021 Purpose**

The purposes of this act are to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place so as to:

(1) Insure sound urban development and accommodation to growth.

(2) Establish uniform legislative standards throughout the state for the adjustment of municipal boundaries.

(3) Insure the efficient provision of urban services to areas that become urban in character.

(4) Insure that areas are not annexed unless municipal services can be provided to those areas.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974.

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**Section 171.022, Fla.Stat., (1977)**

**171.022 Preemption; effect on special laws**

(1) It is further the purpose of this act to provide viable and usable general law standards and procedures for adjusting the boundaries of municipalities in this state.

(2) The provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974, are repealed except as otherwise provided herein.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974.

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**Sections 171.0413 (1)(2)(3)(4)(5), Fla.Stat. (1977)**

**171.0413 Annexation procedures**

Any municipality may annex contiguous, compact, unincorporated territory in the following manner:

(1) An ordinance proposing to annex an area of contiguous, compact, unincorporated territory shall be adopted by the governing body of the annexing municipality pursuant to the procedure for the adoption of a nonemergency ordinance established by s. 166.041. Each such ordinance shall propose only one reasonably compact area to be annexed. However, prior to the ordinance of annexation becoming effective, a referendum on annexation shall be held as set out below,



and, if approved by the referendum, the ordinance shall become effective 10 days after the referendum or as otherwise provided in the ordinance, but not more than 1 year following the date of the referendum.

(2) Following the final adoption of the ordinance of annexation by the governing body of the annexing municipality, the ordinance shall be submitted to a separate vote of the registered electors of the annexing municipality and of the area proposed to be annexed. The referendum on annexation shall be called and conducted and the expense thereof paid by the governing body of the annexing municipality.

(a) The referendum on annexation shall be held at the next regularly scheduled election following the final adoption of the ordinance of annexation by the governing body of the annexing municipality or at a special election called for the purpose of holding the referendum. However, the referendum, whether held at a regularly scheduled election or at a special election, shall not be held sooner than thirty (30) days following the final adoption of the ordinance by the governing body of the annexing municipality.

(b) The governing body of the annexing municipality shall publish notice of the referendum on annexation at least once a week for the four consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held. The notice shall give the time and places for the referendum and a description of the area proposed to be annexed. The description shall be by metes and bounds and shall include a map clearly showing such area.

(c) On the day of the referendum on annexation there shall be prominently displayed at each polling place a copy of the ordinance of annexation and a description of the property proposed to be annexed. The description shall be by metes and bounds and shall include a map clearly showing such area.

(d) Ballots or mechanical voting devices used in the referendum on annexation shall offer the choice "For annexation of property described in ordinance number _____ of the City of _____" and "Against annexation of property described in ordinance number of _____ of the City of _____" in that order.

(e) If there is a separate majority vote for annexation in the annexing municipality and in the area proposed to be annexed, the ordinance of annexation shall become effective on the effective date specified therein. If there is a majority vote against annexation in either the annexing municipality or in the area proposed to be annexed, or in both, the ordinance shall not become effective, and the area proposed to be annexed shall not be the subject of an annexation ordinance by the annexing municipality for a period of two years from the date of the referendum on annexation.

(3) Any improved parcel of land which is owned by one individual, corporation, or legal entity, or owned collectively by one or more individuals, corporations, or legal entities, proposed to be annexed under the provisions of this act shall not be severed, separated, divided, or partitioned by the provisions of said ordinance, but shall, if intended to be annexed, or if annexed, under the provisions of this act, be annexed in its entirety and as a whole. However, nothing herein



contained shall be construed as affecting the validity or enforceability of any ordinance declaring an intention to annex land under the existing law that has been enacted by a municipality prior to July 1, 1975. The owner of such property may waive the requirements of this subsection if such owner does not desire all of his tract or parcel included in said annexation.

(4) Except as otherwise provided in this law, the annexation procedure as set forth in this section shall constitute a uniform method for the adoption of an ordinance of annexation by the governing body of any municipality in this state, and all existing provisions of special laws which establish municipal annexation procedures are repealed hereby; except that any provision or provisions of special law or laws which prohibit annexation of territory that is separated from the annexing municipality by a body of water or watercourse shall not be repealed.

(5) If the area proposed to be annexed is predominantly owned by individuals, corporations, or legal entities who are not registered electors of the area proposed to be annexed, such area shall not be annexed unless a majority of such individuals, corporations, or legal entities consent to such annexation.

Added by Laws 1975, c. 75-297, §2. Amended by Laws 1976, c. 76-176, §1, eff. July 1, 1976; Laws 1977, c. 77-104, §44, eff. Aug. 2, 1977.

Note: §171.0413(5) repealed by *A.B.A. Industries, Inc., v. City of Pinellas Park,* 366 So.2d 761 (Fla.1979).

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**Section 171.042, Fla.Stat. (1977)**

**171.042 Prerequisites to annexation**

(1) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall prepare a report setting forth the plans to provide urban services to any area to be annexed, and the report shall include the following:

(a) A map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, as required in paragraph (c), and the general land use pattern in the area to be annexed.

(b) A statement certifying that the area to be annexed meets the criteria in §171.043.

(c) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

1. Provide for extending urban services except as otherwise provided herein to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation.



2. Provide for the extension of existing municipal water and sewer services into the area to be annexed so that, when such services are provided, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.

3. If extension of major trunk water mains and sewer mains into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains as soon as possible following the effective date of annexation.

4. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(2) The Department of Community Affairs shall lend its technical assistance to any such municipality in preparing for annexation or deannexation.

(3) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the report required by this section with the board of county commissioners of the county wherein the municipality is located.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974. Amended by Laws 1975, c. 75-297, §3; Laws 1978, c. 78-19, §1, eff. July 1, 1978.

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**Section 171.081, Fla.Stat. (1977)**

**171.081 Appeal on annexation or contraction**

No later than 30 days following the passage of an annexation or contraction ordinance, any party affected who believes that he will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction as they apply to his property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any action instituted pursuant to his section, the complainant, should he prevail, shall be entitled to reasonable costs and attorney's fees.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974. Amended by Laws 1978, c. 78-95, §3, eff. May 26, 1978.

## RAISING THE FEDERAL QUESTION

The Federal question was raised in the original pleading and the only question argued before the Florida Supreme Court was whether Chapter 75-452, Laws of Florida, a Special Act, denied their equal protection rights guaranteed by the Fourteenth Amendment, United States Constitution, although other questions were raised but not argued. The Florida Supreme Court specifically discussed and considered the claim of Federal unconstitutionality and rejected Appellants' claim. (See opinion below, App. 1, infra) And again, in the Petition for Rehearing, the only issue argued was that the Special Act violated Appellants' Fourteenth Amendment rights. (App. 10, infra)



## STATEMENT OF THE CASE

The Appellants own and operate a 400 bed hospital and medical complex in an area immediately adjacent to the Appellee, City of Oakland Park, Broward County, Florida. By Chapter 75-452, Laws of Florida, a Special Act, the Legislature of Florida annexed Appellants' property to the Appellee City. Appellants brought suit in the Circuit Court contending that the Special Act denied them important rights previously given by general law, claiming that the general law previously enacted granted them federally protected rights, and claiming that a denial of those fundamental rights violated their Fourteenth Amendment rights under the Constitution of the United States.

By Chapter 171.021, et seq., Fla.Stat. (p. 7, supra), the Legislature had previously provided general standards for municipal annexation applicable throughout Florida. The general law gave valuable rights and protections to citizens and property owners about to be annexed. These general law standards included the right to vote, to findings as to the urban services to be provided, and to petition the Circuit Court to review the annexation ordinance prior to annexation.

The trial court granted Appellees' Motion for Summary Judgment and dismissed the action. On appeal, the Supreme Court of Florida affirmed. The Florida Supreme Court specifically considered Appellants' claim that the Special Act denied them important Federal constitutional rights, ruled that the Special Act, Chapter 75-452, Laws of Florida, was

constitutional and did not deny Appellants' equal protection rights guaranteed by the Fourteenth Amendment of the United States Constitution.

On the appeal, Appellants conceded that the power of the Legislature to expand municipal boundaries by general or special act was implicit. But it was contended that the Legislature must exercise its power constitutionally; that annexation by Special Act subsequent to enacting elaborate uniform general law standards for annexation applicable throughout Florida, including the right of the electors in the annexed area to vote, violated Appellants' Fourteenth Amendment equal protection rights; and, that it was unconstitutional. In its opinion, the Supreme Court of Florida stated Appellants' position correctly but specifically rejected their contention.

## THE QUESTION IS SUBSTANTIAL

The question as to Fourteenth Amendment equal protection implications in municipal annexations where the general law of the State provided the fundamental right to vote in such annexations and other valuable protections, and those rights being cancelled by a subsequent special law annexing with no vote or the other protections, is a novel and substantial one. It has never been directly treated by this Court.

While it is conceded that there is no Federal right to vote in local elections, it is contended that the grant of the right to vote in municipal annexations by the Legislature is a State action which is subject to the



constraints of the equal protection clause. *Avery v. Midland County,* 390 U.S. 474 (1968); *Gomillion v. Lightfoot,* 364 U.S. 339 (1960).

The Florida Legislature provided by general law that citizens in the proposed annexed area could vote in a municipal annexation procedure. The Legislature, in effect, created a class of citizens throughout the State comprised of residents in the areas contiguous to cities and subject to being annexed. Chapter 171.021, Fla.Stat. (1977), p. 7, supra. Also, by general law, the Legislature "preempted" this method of expanding municipal boundaries and repealed all special laws of the Legislature and even City Charters with provisions to the contrary. Chapter 171.022, Fla.Stat. (1977), p. 8, supra. Thus, every citizen living in an unincorporated area and about to be annexed into a City was granted the right to vote on the question of whether his area would be annexed — if the City did the annexing. But, here, when the Legislature subsequently annexed Appellants by Special Act denying them the fundamental right to vote previously granted, as well as all the other valuable protections granted by general law, they were denied Fourteenth Amendment equal protection rights. Members of the same class were treated differently and unequally depending upon what entity was annexing them — the City or the Legislature. The question is not whether the Legislature has the power to legislate in the area of municipal annexation by general or special law, but whether it can set up a double and unequal standard for electors being annexed.

By general law, the Florida Legislature addressed itself to the issue of municipal annexation by carefully establishing a sophisticated, uniform, state-wide method of expanding municipal boundaries. If the fundamental right of a citizen to vote in municipal annexations is entitled to Fourteenth Amendment constraints, then those fundamental equal protection rights are surely violated when municipal politicians have enough political clout to entice the Legislature to subsequently pass a special law annexing his area without a vote. Equal protection rights cannot rest easy upon so flimsy a base. A citizen's equal protection rights cannot depend upon where he lives within the jurisdiction or which entity annexes him or which procedure is chosen. The Legislature gives fundamental rights and protections by general law and denies them by special act.

What was done was to deny Appellants' equal protection rights to vote granted by general law by enacting the special law. The unequal treatment of citizens in the same class here was not rational, nor has it been, nor could it be justified as serving a compelling, or even a useful, State purpose. Such unequal treatment of citizens in the same class without a showing of a compelling State interest cannot survive a claim of equal protection violation. *Kramer v. Union Free School District No. 15,* 395 U.S. 621 (1969); *Cipriano v. City of Houma,* 395 U.S. 701 (1969); *Hill v. Stone,* 421 U.S. 289 (1975). On the contrary, the State purpose as declared by the general law was "to establish uniform legislative standards" for annexation throughout Florida. And, the special law, measured against the broad scope and stated preempted purpose of the general law was



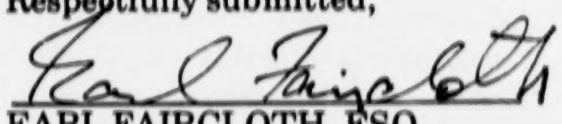
arbitrary, irrational and totally destructive of the uniform Legislative standards established by general law. It denied Appellants' valuable fundamental rights.

The facile answer by the Florida Supreme Court that the Legislators represented the citizens both in the municipality as well as in the annexed area when they passed the special law (App. 1, infra) ignores the truth that the same elected Legislators represented both the annexors and the annexees when they passed the prior general law giving Appellants the fundamental right to vote. And, once the right to vote is granted, the equal protection standard requires that it can be restricted only by a compelling State interest. *Hill v. Stone,* supra.

## CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



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December 17, 1979



## APPENDIX

Supreme Court of Florida

No. 54,012

NORTH RIDGE GENERAL HOSPITAL, INC., etc., et al.,

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, etc., et al.,

*Appellees.*

[June 7, 1979]

SUNDBERG, J.

This cause is before us on direct appeal from an order of the Circuit Court for Broward County upholding the constitutionality of chapter 75-452, Laws of Florida, a special law annexing appellants' property to the City of Oakland Park, Florida. We have jurisdiction pursuant to article V, section 3(b)(1), Florida Constitution. On June 3, 1975, appellant North Ridge General Hospital, Inc. was notified by a city official that its property had been annexed to appellee City of Oakland Park by act of the legislature, chapter 75-452, Laws of Florida. Appellants immediately filed a declaratory judgment action in circuit court, seeking an injunction to prevent appellees from enforcing this law.

Appellants asserted that chapter 75-452 is unconstitutional in that it denied them equal protection of the law and because the notice of intent to seek enactment[1] and the title[2] of the act were insufficient to inform appellants of the annexation. On appellants' motion for summary judgment the circuit court rejected the constitutional challenges and dismissed the action.

We disagree with appellants' contention that the title of chapter 75-452 and the notice of intention to seek its enactment are insufficient to give adequate notice as required by article III, sections 6 and 10, Florida Constitution.[3] The rule with respect to the notice required by each of these constitutional provisions was set forth by this Court in *Coldewey v. Board of Public Instruction,* 189 So.2d 878, 880 (Fla. 1966):

> [T]he purpose of both of these constitutional requirements is to assure that proper notice will be given of the subject matter of proposed legislation. King Kole, Inc. v. Bryant, Fla. 1965, 178 So.2d 2; State ex rel. Watson v. City of Miami, 1943, 153 Fla. 653, 15 So.2d 481. Therefore, the measure of the violation of these constitutional requirements must be whether such published notice or title, as the case may be, confuses as to the subject matter of the proposed legislation.

Thus, the constitution requires only that notice be given of the *subject* of proposed legislation, not that the *object* of such legislation be defined in the notice. "The subject is the matter to which an act relates; the object, the purpose to be accomplished." *Wright v. Board of Public Instruction,* 48 So.2d 912, 915 (Fla. 1950). The term "subject" is broader than the word "object," as one subject may contain many objects. *Spencer v. Hunt,* 109

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[1] "NOTICE OF PROPOSED LEGISLATION

TO WHOM IT MAY CONCERN:

Notice is hereby given of intention to apply to the 1975 session of the Legislature of the State of Florida for the passage of an act relating to the enlarging and extending of the corporate limits of the city of Oakland Park by including previously unincorporated land into said corporate limits; providing an effective date.

BROWARD COUNTY
LEGISLATIVE DELEGATION
By: (s) PETER B. TIERNAN
Attorney for the Delegation.
April 14, 1975"

[2] "A bill to be entitled An act relating to the City of Oakland Park, Broward County; extending and enlarging the corporate limits of the City of Oakland Park by including previously unincorporated land into said corporate limits; providing an effective date."

[3] These sections, in pertinent part, provide:

SECTION 6. Laws. — Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title . . .

SECTION 10. Special laws. — No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law . . .

Fla. 248, 147 So. 282 (1933). Therefore, the terms of both the notice of intention to seek enactment and the title of an act must be broad enough to include all matters contained in the body of the proposed legislation, but the specific contents of the act need not be listed in detail in either form of notice. *City of Naples v. Moon,* 269 So.2d 355 (Fla. 1972); *King Kole v. Bryant,* 178 So.2d 2 (Fla. 1965). The function of both the notice of intention to seek enactment and the title of a special legislative act is to provide reasonable notice to a person whose interests may be directly affected by the proposed legislation, so that he may inquire further into the details thereof and, if he so desires, seek to prevent its enactment or to persuade the legislature to change its substance. *City of Naples v. Moon; State ex rel. Watson v. City of Miami,* 153 Fla. 653, 15 So.2d 481 (1943). If the terms of the notice are broad enough so that an average person can reasonably foresee that his interests might be affected by the proposed legislation, the notice given is constitutionally sufficient.

In the instant case, we find that the terms of the notice of intention to seek enactment and the title of chapter 75-452, Laws of Florida, meet constitutional requirements. Both clearly state that the subject of the act is the annexation of property to the City of Oakland Park. Appellants' property is contiguous to the municipal boundaries and is situated in such a manner that its inclusion within the city is a logical extension of such boundaries. Therefore, it is clear that the notice given was reasonably sufficient to notify appellants that their property might be included in the proposed annexation.



Appellants' contention that chapter 75-452 denies them equal protection of the law is equally without merit. The power to annex an unincorporated area to a municipality reposes in the legislature.[4] The legislature has chosen to share this power with municipal corporations[5] and chapter 171, Florida Statutes (1975), delineates the procedures to be followed when annexation is effected at the municipal level rather than in the legislative forum. When a municipality initiates annexation, subsections (1) and (2) of section 171.0413 provide for a referendum to enable the electors of the annexing municipality and of the area proposed to be annexed to vote on the annexation issue. Further, section 171.081 provides for limited judicial review of the annexation process. In contrast, chapter 75-452, the vehicle employed by the legislature to annex appellants' property, fails to provide either of these procedures. Thus, the right to a referendum and judicial review is predicated upon whether the municipality initiates annexation pursuant to the statutory authority of chapter 171 or whether the legislature chooses to effect the annexation by special act. Although appellants concede that the legislature possesses the power to enact both general and special laws concerning municipal annexation, they posit that this latter power has been exercised so as to deny equal protection to those whose property is annexed by special act. For the following

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[4]Art. VIII, §2(c), Fla. Const.; *City of Long Beach Resort v. Collins,* 261 So.2d 498 (Fla. 1972); *City of Auburndale v. Adams Packing Ass'n,* 171 So.2d 161 (Fla. 1965); *MacGuyer v. City of Tampa,* 89 Fla. 138, 103 So.418 (1925).

[5]*Smith v. Ayres,* 174 So.2d 727 (Fla. 1965); *City of Sebring v. Harder Hall, Inc.,* 150 Fla. 824, 9 So.2d 350 (1942); *Klich v. Miami Land & Dev. Co.,* 139 Fla. 794, 191 So.41 (1939).

reason we find that chapter 75-452, Laws of Florida, withstands constitutional scrutiny.

The legislature has wide discretion in creating statutory classifications. There is a presumption in favor of the validity of a statute which treats some persons or things differently from others.

> [I]f any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made.

*Lewis v. Mathis,* 345 So.2d 1066, 1068 (Fla. 1977); *accord, Yoo Kun Wha v. Kelly,* 154 So.2d 161 (Fla. 1963); *Anderson v. Board of Public Instruction for Hillsborough County,* 102 Fla. 695, 136 So.334 (1931).

Further, one who assails the classification has the burden of showing that it is arbitrary and unreasonable. *State v. City of Miami Beach,* 234 So.2d 103 (Fla. 1970); *Shelton v. Reeder,* 121 So.2d 145 (Fla. 1960); *State ex rel. Bennett v. Lee,* 123 Fla. 252, 166 So.565 (1936).



It is well-settled that the legislature is entitled to annex an area with or without an affirmative vote of the affected property owners.[6] As noted by appellants, however, subsections (1) and (2) of section 171.0413 require a referendum when annexation is initiated by the municipality. The reasoning behind this distinction is readily apparent. The legislators are the elected representatives of those residing within the annexing municipality as well as of the residents of the area proposed to be annexed. Consequently, these officials are obliged to consider the interests of both sets of constituents in debating the annexation issue. When a municipality seeks to annex a neighboring area, however, there is a danger that the interests of those persons in the area proposed to be annexed will not be fully aired, because the elected officials of the municipality are not also the elected representatives of the neighboring area. In order to ensure proper representation of the interests of all persons to be affected by the municipally-initiated annexation, chapter 171 provides for a referendum on the annexation question and other procedural safeguards.

An examination of section 171.044, Florida Statutes (1975), demonstrates the legislative intent underlying the method of annexation employed in the case before us. Under section 171.044, property owners may *voluntarily* petition a municipality for annexation. A referendum is not required in order to complete annexation pursuant to this provision. The legislature apparently concluded that when the property owners themselves seek annexation, a referendum is

[6]State ex rel. Davis v. City of Clearwater, 106 Fla. 761, 139 So. 377 (1932); State v. City of Miami, 103 Fla. 54, 137 So 261 (1930); Nabb v. Andreu, 89 Fla. 414, 104 So. 591 (1925).

unnecessary to protect their interests; these persons would not voluntarily petition for annexation had they not concluded that it would be to their benefit. It is evident that similar reasoning underlies the absence of a referendum when members of the legislature effect annexation by special act. Hence, we conclude that this is a reasonable basis for the differing procedural requirements governing municipally-initiated annexation and annexation by the legislature pursuant to special act. Accordingly, the order of the Circuit Court for Broward County upholding chapter 75-452, Laws of Florida, is affirmed.

It is so ordered.

ENGLAND, C.J., ADKINS, BOYD, OVERTON, HATCHETT and ALDERMAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.



An Appeal from the Circuit Court in and for Broward County.

Lamar Warren, Judge — Case No. 75-11717

Earl Faircloth of Houston, Faircloth, Cooper and Easthope, Fort Lauderdale, Florida,

for Appellants

Lewis D. Haines, II, City Attorney; and Edward J. Williams, Assistant City Attorney, Fort Lauderdale, Florida,

for Appellees

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. 54,012

NORTH RIDGE GENERAL HOSPITAL, INC.,
etc., et al.,

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, etc., et al.,

*Appellees.*

**APPELLANTS' PETITION FOR REHEARING**

**ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA**

Appellant moves for a rehearing and in support of its motion would respectfully show that:

The Court overlooked or misapprehended that the decision denies valuable property rights and the equal protection of the law of some citizens of Florida contrary to the guarantees of the Fourteenth Amendment of the United States Constitution.



Section 171.042, F.S., is a general law detailing procedural standards to be observed in annexations. Those standards are a prerequisite to annexation. These general standards were designed for the protection of the residents and property owners of the annexed territory. These valuable property rights are mandatory when a municipality is the annexing authority. These same valuable rights are suspended when the Legislature annexes land to a municipality by a special act. They are not repealed by the special act but merely suspended for the time being.

The question is not whether the Legislature has the power to legislate in the area of municipal annexation by general or special law, but whether it can set a double and unequal standard in so doing.

Prior to the adoption of the Florida Constitution of 1968, the courts of this state by well established case law had fashioned uniform and equal protection of property and political rights of citizens in annexation procedures. Section 171.042, et. seq., merely codified by general law the preexisting duty requiring a benefit to the owners of property in annexed territory. But those rights are extended only when the municipality acts. Those identical rights provided by the general law are suspended and not permitted when annexation is done by special act of the Legislature.

The question is whether the Legislature may, within the limits of well established constitutional rules, set a double and unequal standard, granting valuable property rights to all by general law in one circumstance and, in effect, suspending those rights by special act. This policy and practice is not equal protection of the law.

It is respectfully submitted that this Honorable Court overlooked or misapprehended that the Legislature has set a double and unequal standard which gives valuable property and political rights by general law but denies equal protection of the law to citizens and property owners who live in territory annexed by a special act, contrary to the guarantees of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, it is further respectfully prayed that this Honorable Court will grant a rehearing in this case.

HOUSTON, FAIRCLOTH,
COOPER, EASTHOPE &
KELLEY
*Attorneys for Appellants*
2455 East Sunrise Boulevard
Fort Lauderdale, FL 33304
Telephone: (305) 561-2700

By EARL FAIRCLOTH
Earl Faircloth

I HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing was furnished by mail to EDWARD J. WILLIAM, ESQ./LEWIS D. HAINES, ESQ., 4530 North Federal Highway, Fort Lauderdale, FL 33308, this 21st day of June, 1979.

EARL FAIRCLOTH
Earl Faircloth



SUPREME COURT OF FLORIDA

FRIDAY, SEPTEMBER 21, 1979

CASE NO. 54,012

In the Circuit Court in and for Broward County, Florida
#75-11717

NORTH RIDGE GENERAL HOSPITAL, INC.,
etc., et al.,
*Appellants,*

*v.*

CITY OF OAKLAND PARK, etc., et al.,
*Appellees.*

Upon consideration of the Petition for Rehearing filed by the attorney for Appellants,

IT IS ORDERED by the Court that said Petition be and the same is hereby denied.

TC
cc: Hon. Lamar Warren, Judge
Hon. Robert E. Lockwood, Clerk

Earl Faircloth, Esquire
Edward J. William, Esquire
Lewis D. Haines, Esquire

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

By: Tanya Carrole
Deputy Clerk



IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. 54,012

In the Circuit Court in and for Broward County, Florida
#75-11717

NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation; FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee,
*Appellants,*

*vs.*

CITY OF OAKLAND PARK, a municipal corporation; H. LAYTON MAINGUY, as Mayor, and THEODORE H. BEST, JIMMY D. YATES, WILLIAM J. BOYE, WILLIAM L. NASH and H. KENNETH POWELL, as Councilmen,
*Appellees.*

**NOTICE TO APPEAL TO THE SUPREME COURT OF THE UNITED STATES**

NOTICE IS HEREBY GIVEN that NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation, FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee, the Appellants above, hereby appeal to the SUPREME COURT OF THE UNITED STATES from the Final Judgment of the

Supreme Court of the State of Florida, affirming the lower court's granting of Appellee's Motion for Summary Judgment, entered in this action on June 7, 1979, Petition for Rehearing denied September 21, 1979.

THIS APPEAL is taken pursuant to 28 U.S.C., §1257(2).

HOUSTON, FAIRCLOTH, COOPER, EASTHOPE & KELLY
Mezzanine International Building
2455 East Sunrise Boulevard
Fort Lauderdale, FL 33304
Telephone: (305) 561-2700

By EARL FAIRCLOTH
EARL FAIRCLOTH

*Attorneys for Appellants*

HEREBY CERTIFY that a true copy of the foregoing NOTICE OF APPEAL was furnished by mail to GORDON G. COOPER, ESQ., and LEWIS D. HAINES, II, Attorneys for Appellees, 3650 N.E. 12th Avenue, Oakland Park, FL 33334, this 29th day of November, 1979.

EARL FAIRCLOTH
EARL FAIRCLOTH



**CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY certifies that a true copy of the foregoing JURISDICTION STATEMENT was furnished by mail to G. GORDON COOPER, ESQ., and LEWIS D. HAINES, II, Attorneys for Appellees, 3650 Northeast 12th Avenue, Oakland Park, FL 33334, this 17th day of December, 1979.

EARL FAIRCLOTH, ESQ.
Houston, Faircloth, Cooper, Easthope & Kelley
Mezzanine International Building
2455 East Sunrise Boulevard
Fort Lauderdale, FL 33304

*Counsel for Appellants*

Supreme Court, U. S.
FILED
JAN 21 1980
MICHAEL RODAK, JR., CLERK

in the

# Supreme Court

of the

# United States

OCTOBER TERM, 1979

No. 79-948

NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation; FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, a municipal corporation; H. LAYTON MAINGUY, as Mayor, and THEODORE H. BEST, JIMMY D. YATES, WILLIAM J. BOYE, WILLIAM L. NASH and H. KENETH POWELL, as Councilmen,

*Appellees.*

ON APPEAL FROM THE
SUPREME COURT OF FLORIDA

## MOTION TO DISMISS APPEAL
**or in the alternative**
## TO AFFIRM JUDGMENT

LEWIS D. HAINES, II, ESQ.,
City Attorney
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Oakland Park, Florida 33334
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By: Gordon G. Cooper
Assistant City Attorney
*Counsel for Appellee*

January 18, 1980

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in the

# Supreme Court

of the

# United States

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**OCTOBER TERM, 1979**

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**No. 79-948**

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NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation; FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, a municipal corporation; H. LAYTON MAINGUY, as Mayor, and THEODORE H. BEST, JIMMY D. YATES, WILLIAM J. BOYE, WILLIAM L. NASH and H. KENETH POWELL, as Councilmen,

*Appellees.*

---

**ON APPEAL FROM THE SUPREME COURT OF FLORIDA**

---

## MOTION TO DISMISS APPEAL or in the alternative TO AFFIRM JUDGMENT

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## MOTION TO DISMISS APPEAL
## or in the alternative
## TO AFFIRM JUDGMENT

Pursuant to Rule 16, paragraphs 1 (b) and 1 (d), of the Revised Rules of this Court, Appellees move that this appeal be dismissed or alternatively that the Judgment of the Supreme Court of Florida be affirmed.

## JURISDICTION

This is an appeal from a Judgment of the Supreme Court of Florida which held that Chapter 74-452, Laws of Florida, a Special Act which annexed property owned by the Appellants into the City of Oakland Park, Florida, did not violate the Fourteenth Amendment equal protection rights of the Appellants.

The Judgment of the Supreme Court was entered on June 7, 1979 (App. 1-9 infra).

The Petition for Rehearing was filed by the Appellant on June 21, 1979 (App. 10-12 infra).

The Petition for Rehearing was denied by the Supreme Court of Florida on September 21, 1979 (App. 13 infra).

The Notice of Appeal was filed on November 29, 1979 (App. 15-16 infra).

The Jurisdiction of this Court is invoked under 28 U.S.C. §1257 (2).



## QUESTION PRESENTED

Whether the annexation of property into a municipality by a Special Act of the State Legislature when there is a general law in existence which establishes procedures when a municipality is annexing property into its territory violates the Fourteenth Amendment equal protection rights of those property owners annexed by Special Act of the Legislature.

## CONSTITUTIONAL PROVISIONS AND STATUTES OF FLORIDA

Fourteenth Amendment, United States Constitution

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

---

Article VIII, Section 2 (c), Constitution of the State of Florida

> "(c) ANNEXATION. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

Chapter 75-452, Laws of Florida, a Special Act

CHAPTER 75-452
House Bill No. 2177

AN ACT relating to the City of Oakland Park, Broward County; extending and enlarging the corporate limits of the City of Oakland Park by including previously unincorporated land into said corporate limits; providing an effective date.



*Be It Enacted by the Legislature of the State of Florida:*

Section 1. The present corporate limits of the City of Oakland Park, Broward County, are hereby extended and enlarged so as to include, in addition to the territory presently within its corporate limits, the following described lands and territory, to wit:

> That certain unincorporated areas commencing on the east right-of-way line of North Dixie Highway at the present corporate limits (in the vicinity of Northeast 52nd Street or approximately 1400 feet south of Northeast 56th Street) northerly along this right-of-way line to the north right-of-way of Northeast 62nd Street, westerly to the west right-of-way line of Northeast 9th Avenue, southerly to a point 100 feet north of the north right-of-way line of Northeast 58th Court, easterly 400 feet, then southerly to the north right-of-way line of Northeast 58th Street, westerly to the west right-of-way line on Northeast 9th Avenue, southerly to the north right-of-way of Northeast 56th Street, southerly and easterly along the present corporate limits of the City of Oakland Park to the point of beginning together with the west 330 feet of the north 330 feet of the Northwest ¼ of the Northwest ¼ of Section 14 all lying in Township 49 South, Range 42 East and being situated in Broward County, Florida.

Section 2. This act shall take effect upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State July 5, 1975.

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**Section 171.021 (1)(2)(3)(4), Fla.Stat., (1977)**

**171.021 Purpose**

The purposes of this act are to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place so as to:

(1) Insure sound urban development and accommodation to growth.

(2) Establish uniform legislative standards throughout the state for the adjustment of municipal boundaries.

(3) Insure the efficient provision of urban services to areas that become urban in character.

(4) Insure that areas are not annexed unless municipal services can be provided to those areas.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974.

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**Section 171.022, Fla.Stat., (1977)**

**171.022 Preemption; effect on special laws**

(1) It is further the purpose of this act to provide viable and usable general law standards and procedures for adjusting the boundaries of municipalities in this state.

(2) The provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974, are repealed except as otherwise provided herein.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974.

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**Sections 171.0413 (1)(2)(3)(4)(5), Fla.Stat. (1977)**

**171.0413 Annexation procedures**

Any municipality may annex contiguous, compact, unincorporated territory in the following manner:

(1) An ordinance proposing to annex an area of contiguous, compact, unincorporated territory shall be adopted by the governing body of the annexing municipality pursuant to the procedure for the adoption of a nonemergency ordinance established by s. 166.041. Each such ordinance shall propose only one reasonably compact area to be annexed. However, prior to the ordinance of annexation becoming effective, a referendum on annexation shall be held as set out below,

and, if approved by the referendum, the ordinance shall become effective 10 days after the referendum or as otherwise provided in the ordinance, but not more than 1 year following the date of the referendum.

(2) Following the final adoption of the ordinance of annexation by the governing body of the annexing municipality, the ordinance shall be submitted to a separate vote of the registered electors of the annexing municipality and of the area proposed to be annexed. The referendum on annexation shall be called and conducted and the expense thereof paid by the governing body of the annexing municipality.

(a) The referendum on annexation shall be held at the next regularly scheduled election following the final adoption of the ordinance of annexation by the governing body of the annexing municipality or at a special election called for the purpose of holding the referendum. However, the referendum, whether held at a regularly scheduled election or at a special election, shall not be held sooner than thirty (30) days following the final adoption of the ordinance by the governing body of the annexing municipality.

(b) The governing body of the annexing municipality shall publish notice of the referendum on annexation at least once a week for the four consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held. The notice shall give the time and places for the referendum and a description of the area proposed to be annexed. The description shall be by metes and bounds and shall include a map clearly showing such area.



(c) On the day of the referendum on annexation there shall be prominently displayed at each polling place a copy of the ordinance of annexation and a description of the property proposed to be annexed. The description shall be by metes and bounds and shall include a map clearly showing such area.

(d) Ballots or mechanical voting devices used in the referendum on annexation shall offer the choice "For annexation of property described in ordinance number _____ of the City of _____" and "Against annexation of property described in ordinance number of _____ of the City of _____" in that order.

(e) If there is a separate majority vote for annexation in the annexing municipality and in the area proposed to be annexed, the ordinance of annexation shall become effective on the effective date specified therein. If there is a majority vote against annexation in either the annexing municipality or in the area proposed to be annexed, or in both, the ordinance shall not become effective, and the area proposed to be annexed shall not be the subject of an annexation ordinance by the annexing municipality for a period of two years from the date of the referendum on annexation.

(3) Any improved parcel of land which is owned by one individual, corporation, or legal entity, or owned collectively by one or more individuals, corporations, or legal entities, proposed to be annexed under the provisions of this act shall not be severed, separated, divided, or partitioned by the provisions of said ordinance, but shall, if intended to be annexed, or if annexed, under the provisions of this act, be annexed in its entirety and as a whole. However, nothing herein

contained shall be construed as affecting the validity or enforceability of any ordinance declaring an intention to annex land under the existing law that has been enacted by a municipality prior to July 1, 1975. The owner of such property may waive the requirements of this subsection if such owner does not desire all of his tract or parcel included in said annexation.

(4) Except as otherwise provided in this law, the annexation procedure as set forth in this section shall constitute a uniform method for the adoption of an ordinance of annexation by the governing body of any municipality in this state, and all existing provisions of special laws which establish municipal annexation procedures are repealed hereby; except that any provision or provisions of special law or laws which prohibit annexation of territory that is separated from the annexing municipality by a body of water or watercourse shall not be repealed.

(5) If the area proposed to be annexed is predominantly owned by individuals, corporations, or legal entities who are not registered electors of the area proposed to be annexed, such area shall not be annexed unless a majority of such individuals, corporations, or legal entities consent to such annexation.

Added by Laws 1975, c. 75-297, §2. Amended by Laws 1976, c. 76-176, §1, eff. July 1, 1976; Laws 1977, c. 77-104, §44, eff. Aug. 2, 1977.

Note: §171.0413(5) repealed by *A.B.A. Industries, Inc., v. City of Pinellas Park,* 366 So.2d 761 (Fla.1979).



**Section 171.042, Fla.Stat. (1977)**

**171.042 Prerequisites to annexation**

(1) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall prepare a report setting forth the plans to provide urban services to any area to be annexed, and the report shall include the following:

(a) A map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, as required in paragraph (c), and the general land use pattern in the area to be annexed.

(b) A statement certifying that the area to be annexed meets the criteria in §171.043.

(c) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

1. Provide for extending urban services except as otherwise provided herein to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation.

2. Provide for the extension of existing municipal water and sewer services into the area to be annexed so that, when such services are provided, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.

3. If extension of major trunk water mains and sewer mains into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains as soon as possible following the effective date of annexation.

4. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(2) The Department of Community Affairs shall lend its technical assistance to any such municipality in preparing for annexation or deannexation.

(3) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the report required by this section with the board of county commissioners of the county wherein the municipality is located.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974. Amended by Laws 1975, c. 75-297, §3; Laws 1978, c. 78-19, §1, eff. July 1, 1978.

---



**Section 171.081, Fla.Stat. (1977)**

**171.081 Appeal on annexation or contraction**

No later than 30 days following the passage of an annexation or contraction ordinance, any party affected who believes that he will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction as they apply to his property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any action instituted pursuant to his section, the complainant, should he prevail, shall be entitled to reasonable costs and attorney's fees.

Added by Laws 1974, c. 74-190, §1, eff. Oct. 1, 1974. Amended by Laws 1978, c. 78-95, §3, eff. May 26, 1978.

**STATEMENT**

The Legislature of the State of Florida by Special Act, Chapter 75-452, Laws of Florida, annexed property owned by the Appellants into the City of Oakland Park. The Appellants filed an action in the Broward County Circuit Court claiming that the Special Act, Chapter 75-452, Laws of Florida, denied them Fourteenth Amendment equal rights protection. The Circuit Court granted the Appellees Motion for Summary Judgment, thereby dismissing the action. The Supreme Court of Florida on June 7, 1979 affirmed the action of the trial court. The Supreme Court of Florida specifically addressed the question as to whether Chapter 75-452, Laws of Florida, denied the Appellants equal protection

under the Fourteenth Amendment. The Supreme Court of Florida denied the Petition for Rehearing on September 21, 1979.

## ARGUMENT

The Legislature by the enactment of Chapter 171, Florida Statutes, has delegated to municipalities the procedures by which municipalities must follow when annexing territories. The Legislature, however, has retained the power to enact Special Acts relating to annexation. Article VIII, Section 2 (c) of the Constitution of the State of Florida, grants to the Legislature the absolute power to enact legislation regarding annexation. The Appellants herein argue that Chapter 75-452, Laws of Florida, (1975) which annexed Appellants property into the City of Oakland Park, denies them of the equal protection of the law. Appellants contend that the Legislature when it is dealing with annexation of property must abide by the specific procedures set out by which municipalities annex property. Appellants are, therefore, of the opinion that the two laws treat them differently and unfairly. The contention of the Appellants has continuously ignored the strict definition of equal protection as pertains to Special Acts.

> "The equality clause of the Fourteenth Amendment is not necessarily infringed by special legislation. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely required that all persons subjected to such special legislation shall be treated alike under like circumstances



> and conditions. It has been said that the Federal Constitution does not prohibit special laws inflexibly and always; it permits them when there are special evils with which existing general laws are incompetent to cope." 16 Am. Jur. 2d, Constitutional Law, Section 532.

The fundamental definition of the equal protection clause requires that all persons subject to a law or all persons situated in the same class be treated equally under that law. The Appellants, therefore, are situated in the class of persons whose territory was annexed into the City of Oakland Park by Chapter 75-452, Laws of Florida, Special Act, and there has been no contention that the Appellants were not equally treated with those other persons annexed under that law.

The Appellants in their Jurisdictional Statement have conceded that there is no Federal right to vote in local elections so there is no Federal question as to that issue.

The Appellants have, therefore, side-stepped the entire issue relating to the strict interpretation of the equal protection clause of the Fourteenth Amendment by denying the fact that the Legislature has created two classes of persons, one being those annexed into a municipality by vote of the electors in the municipality, and secondly, those persons annexed into a municipality by Special Act of the Legislature. The Supreme Court of Florida citing *State ex rel. Davis v. City of Clearwater,* 106 Fla. 761, 139 So. 377 (1932); *State v. City of Miami,* 103 Fla. 54, 137 So. 261 (1930); *Nabb v. Andreu,* 89 Fla. 414, 104 So. 591 (1925) of the opinion "It is well-settled

that the Legislature is entitled to annex an area with or without an affirmative vote of the affected property owners." The Appellants have failed to carry the burden of showing that the two classifications of property owners are arbitrary and unreasonable. *State v. City of Miami Beach,* 234 So.2d 103 (Fla. 1970); *Shelton v. Reeder,* 121 So.2d 145 (Fla. 1960); *State ex rel. Bennett v. Lee,* 123 Fla. 252, 166 So. 565 (1936). The questions presented by the Appellants herein neither present a substantial Federal question, nor does it present a question that was not considered and dealt with by the Supreme Court of Florida.



## CONCLUSION

For the foregoing reasons either this appeal should be dismissed or the Judgment of the Supreme Court of Florida should be affirmed.

Respectfully submitted,
LEWIS D. HAINES, II,
City Attorney for City of Oakland Park, Florida
3650 N.E. 12th Avenue
Oakland Park, Florida 33334
Telephone (305) 561-6169

By: Gordon G. Cooper
Assistant City Attorney
*Counsel for Appellees*

January 18, 1980

# APPENDIX

Supreme Court of Florida

No. 54,012

NORTH RIDGE GENERAL HOSPITAL, INC., etc., et al.,

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, etc., et al.,

*Appellees.*

[June 7, 1979]

SUNDBERG, J.

This cause is before us on direct appeal from an order of the Circuit Court for Broward County upholding the constitutionality of chapter 75-452, Laws of Florida, a special law annexing appellants' property to the City of Oakland Park, Florida. We have jurisdiction pursuant to article V, section 3(b)(1), Florida Constitution. On June 3, 1975, appellant North Ridge General Hospital, Inc. was notified by a city official that its property had been annexed to appellee City of Oakland Park by act of the legislature, chapter 75-452, Laws of Florida. Appellants immediately filed a declaratory judgment action in circuit court, seeking an injunction to prevent appellees from enforcing this law.

Appellants asserted that chapter 75-452 is unconstitutional in that it denied them equal protection of the law and because the notice of intent to seek enactment[1] and the title[2] of the act were insufficient to inform appellants of the annexation. On appellants' motion for summary judgment the circuit court rejected the constitutional challenges and dismissed the action.

We disagree with appellants' contention that the title of chapter 75-452 and the notice of intention to seek its enactment are insufficient to give adequate notice as required by article III, sections 6 and 10, Florida Constitution.[3] The rule with respect to the notice required by each of these constitutional provisions was set forth by this Court in *Coldewey v. Board of Public Instruction,* 189 So.2d 878, 880 (Fla. 1966):

> [T]he purpose of both of these constitutional requirements is to assure that proper notice will be given of the subject matter of proposed legislation. King Kole, Inc. v. Bryant, Fla. 1965, 178 So.2d 2; State ex rel. Watson v. City of Miami, 1943, 153 Fla. 653, 15 So.2d 481. Therefore, the measure of the violation of these constitutional requirements must be whether such published notice or title, as the case may be, confuses as to the subject matter of the proposed legislation.

Thus, the constitution requires only that notice be given of the *subject* of proposed legislation, not that the *object* of such legislation be defined in the notice. "The subject is the matter to which an act relates; the object, the purpose to be accomplished." *Wright v. Board of Public Instruction,* 48 So.2d 912, 915 (Fla. 1950). The term "subject" is broader than the word "object," as one subject may contain many objects. *Spencer v. Hunt,* 109

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[1] "NOTICE OF PROPOSED LEGISLATION

TO WHOM IT MAY CONCERN:

Notice is hereby given of intention to apply to the 1975 session of the Legislature of the State of Florida for the passage of an act relating to the enlarging and extending of the corporate limits of the city of Oakland Park by including previously unincorporated land into said corporate limits; providing an effective date.

BROWARD COUNTY
LEGISLATIVE DELEGATION
By: (s) PETER B. TIERNAN
Attorney for the Delegation.
April 14, 1975"

[2] "A bill to be entitled An act relating to the City of Oakland Park, Broward County; extending and enlarging the corporate limits of the City of Oakland Park by including previously unincorporated land into said corporate limits; providing an effective date."

[3] These sections, in pertinent part, provide:

SECTION 6. Laws. — Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title . . .

SECTION 10. Special laws. — No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law . . .

Fla. 248, 147 So. 282 (1933). Therefore, the terms of both the notice of intention to seek enactment and the title of an act must be broad enough to include all matters contained in the body of the proposed legislation, but the specific contents of the act need not be listed in detail in either form of notice. *City of Naples v. Moon,* 269 So.2d 355 (Fla. 1972); *King Kole v. Bryant,* 178 So.2d 2 (Fla. 1965). The function of both the notice of intention to seek enactment and the title of a special legislative act is to provide reasonable notice to a person whose interests may be directly affected by the proposed legislation, so that he may inquire further into the details thereof and, if he so desires, seek to prevent its enactment or to persuade the legislature to change its substance. *City of Naples v. Moon; State ex rel. Watson v. City of Miami,* 153 Fla. 653, 15 So.2d 481 (1943). If the terms of the notice are broad enough so that an average person can reasonably foresee that his interests might be affected by the proposed legislation, the notice given is constitutionally sufficient.

In the instant case, we find that the terms of the notice of intention to seek enactment and the title of chapter 75-452, Laws of Florida, meet constitutional requirements. Both clearly state that the subject of the act is the annexation of property to the City of Oakland Park. Appellants' property is contiguous to the municipal boundaries and is situated in such a manner that its inclusion within the city is a logical extension of such boundaries. Therefore, it is clear that the notice given was reasonably sufficient to notify appellants that their property might be included in the proposed annexation.



Appellants' contention that chapter 75-452 denies them equal protection of the law is equally without merit. The power to annex an unincorporated area to a municipality reposes in the legislature.[4] The legislature has chosen to share this power with municipal corporations[5] and chapter 171, Florida Statutes (1975), delineates the procedures to be followed when annexation is effected at the municipal level rather than in the legislative forum. When a municipality initiates annexation, subsections (1) and (2) of section 171.0413 provide for a referendum to enable the electors of the annexing municipality and of the area proposed to be annexed to vote on the annexation issue. Further, section 171.081 provides for limited judicial review of the annexation process. In contrast, chapter 75-452, the vehicle employed by the legislature to annex appellants' property, fails to provide either of these procedures. Thus, the right to a referendum and judicial review is predicated upon whether the municipality initiates annexation pursuant to the statutory authority of chapter 171 or whether the legislature chooses to effect the annexation by special act. Although appellants concede that the legislature possesses the power to enact both general and special laws concerning municipal annexation, they posit that this latter power has been exercised so as to deny equal protection to those whose property is annexed by special act. For the following

[4]Art. VIII, §2(c), Fla. Const.; *City of Long Beach Resort v. Collins,* 261 So.2d 498 (Fla. 1972); *City of Auburndale v. Adams Packing Ass'n,* 171 So.2d 161 (Fla. 1965); *MacGuyer v. City of Tampa,* 89 Fla. 138, 103 So.418 (1925).

[5]*Smith v. Ayres,* 174 So.2d 727 (Fla. 1965); *City of Sebring v. Harder Hall, Inc.,* 150 Fla. 824, 9 So.2d 350 (1942); *Klich v. Miami Land & Dev. Co.,* 139 Fla. 794, 191 So.41 (1939).

reason we find that chapter 75-452, Laws of Florida, withstands constitutional scrutiny.

The legislature has wide discretion in creating statutory classifications. There is a presumption in favor of the validity of a statute which treats some persons or things differently from others.

> [I]f any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made.

*Lewis v. Mathis,* 345 So.2d 1066, 1068 (Fla. 1977); *accord, Yoo Kun Wha v. Kelly,* 154 So.2d 161 (Fla. 1963); *Anderson v. Board of Public Instruction for Hillsborough County,* 102 Fla. 695, 136 So.334 (1931).

Further, one who assails the classification has the burden of showing that it is arbitrary and unreasonable. *State v. City of Miami Beach,* 234 So.2d 103 (Fla. 1970); *Shelton v. Reeder,* 121 So.2d 145 (Fla. 1960); *State ex rel. Bennett v. Lee,* 123 Fla. 252, 166 So.565 (1936).



It is well-settled that the legislature is entitled to annex an area with or without an affirmative vote of the affected property owners.[6] As noted by appellants, however, subsections (1) and (2) of section 171.0413 require a referendum when annexation is initiated by the municipality. The reasoning behind this distinction is readily apparent. The legislators are the elected representatives of those residing within the annexing municipality as well as of the residents of the area proposed to be annexed. Consequently, these officials are obliged to consider the interests of both sets of constituents in debating the annexation issue. When a municipality seeks to annex a neighboring area, however, there is a danger that the interests of those persons in the area proposed to be annexed will not be fully aired, because the elected officials of the municipality are not also the elected representatives of the neighboring area. In order to ensure proper representation of the interests of all persons to be affected by the municipally-initiated annexation, chapter 171 provides for a referendum on the annexation question and other procedural safeguards.

An examination of section 171.044, Florida Statutes (1975), demonstrates the legislative intent underlying the method of annexation employed in the case before us. Under section 171.044, property owners may *voluntarily* petition a municipality for annexation. A referendum is not required in order to complete annexation pursuant to this provision. The legislature apparently concluded that when the property owners themselves seek annexation, a referendum is

[6]State ex rel. Davis v. City of Clearwater, 106 Fla. 761, 139 So. 377 (1932); State v. City of Miami, 103 Fla. 54, 137 So 261 (1930); Nabb v. Andreu, 89 Fla. 414, 104 So. 591 (1925).

unnecessary to protect their interests; these persons would not voluntarily petition for annexation had they not concluded that it would be to their benefit. It is evident that similar reasoning underlies the absence of a referendum when members of the legislature effect annexation by special act. Hence, we conclude that this is a reasonable basis for the differing procedural requirements governing municipally-initiated annexation and annexation by the legislature pursuant to special act. Accordingly, the order of the Circuit Court for Broward County upholding chapter 75-452, Laws of Florida, is affirmed.

It is so ordered.

ENGLAND, C.J., ADKINS, BOYD, OVERTON, HATCHETT and ALDERMAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.



An Appeal from the Circuit Court in and for Broward County.

Lamar Warren, Judge — Case No. 75-11717

Earl Faircloth of Houston, Faircloth, Cooper and Easthope, Fort Lauderdale, Florida,

for Appellants

Lewis D. Haines, II, City Attorney; and Edward J. Williams, Assistant City Attorney, Fort Lauderdale, Florida,

for Appellees

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. 54,012

NORTH RIDGE GENERAL HOSPITAL, INC.,
etc., et al.,

*Appellants,*

*vs.*

CITY OF OAKLAND PARK, etc., et al.,

*Appellees.*

**APPELLANTS' PETITION FOR REHEARING**

**ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA**

Appellant moves for a rehearing and in support of its motion would respectfully show that:

The Court overlooked or misapprehended that the decision denies valuable property rights and the equal protection of the law of some citizens of Florida contrary to the guarantees of the Fourteenth Amendment of the United States Constitution.



Section 171.042, F.S., is a general law detailing procedural standards to be observed in annexations. Those standards are a prerequisite to annexation. These general standards were designed for the protection of the residents and property owners of the annexed territory. These valuable property rights are mandatory when a municipality is the annexing authority. These same valuable rights are suspended when the Legislature annexes land to a municipality by a special act. They are not repealed by the special act but merely suspended for the time being.

The question is not whether the Legislature has the power to legislate in the area of municipal annexation by general or special law, but whether it can set a double and unequal standard in so doing.

Prior to the adoption of the Florida Constitution of 1968, the courts of this state by well established case law had fashioned uniform and equal protection of property and political rights of citizens in annexation procedures. Section 171.042, et. seq., merely codified by general law the preexisting duty requiring a benefit to the owners of property in annexed territory. But those rights are extended only when the municipality acts. Those identical rights provided by the general law are suspended and not permitted when annexation is done by special act of the Legislature.

The question is whether the Legislature may, within the limits of well established constitutional rules, set a double and unequal standard, granting valuable property rights to all by general law in one circumstance and, in effect, suspending those rights by special act. This policy and practice is not equal protection of the law.

It is respectfully submitted that this Honorable Court overlooked or misapprehended that the Legislature has set a double and unequal standard which gives valuable property and political rights by general law but denies equal protection of the law to citizens and property owners who live in territory annexed by a special act, contrary to the guarantees of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, it is further respectfully prayed that this Honorable Court will grant a rehearing in this case.

HOUSTON, FAIRCLOTH,
COOPER, EASTHOPE &
KELLEY
*Attorneys for Appellants*
2455 East Sunrise Boulevard
Fort Lauderdale, FL 33304
Telephone: (305) 561-2700

By EARL FAIRCLOTH
Earl Faircloth

I HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing was furnished by mail to EDWARD J. WILLIAM, ESQ./LEWIS D. HAINES, ESQ., 4530 North Federal Highway, Fort Lauderdale, FL 33308, this 21st day of June, 1979.

EARL FAIRCLOTH
Earl Faircloth



SUPREME COURT OF FLORIDA

FRIDAY, SEPTEMBER 21, 1979

CASE NO. 54,012

In the Circuit Court in and for Broward County, Florida
#75-11717

NORTH RIDGE GENERAL HOSPITAL, INC.,
etc., et al.,
*Appellants,*

*v.*

CITY OF OAKLAND PARK, etc., et al.,
*Appellees.*

Upon consideration of the Petition for Rehearing filed by the attorney for Appellants,

IT IS ORDERED by the Court that said Petition be and the same is hereby denied.

TC

cc: Hon. Lamar Warren, Judge
Hon. Robert E. Lockwood, Clerk

Earl Faircloth, Esquire
Edward J. William, Esquire
Lewis D. Haines, Esquire

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

By: Tanya Carrole
Deputy Clerk



IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. 54,012

In the Circuit Court in and for Broward County, Florida
#75-11717

NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation; FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee,
*Appellants,*

*vs.*

CITY OF OAKLAND PARK, a municipal corporation; H. LAYTON MAINGUY, as Mayor, and THEODORE H. BEST, JIMMY D. YATES, WILLIAM J. BOYE, WILLIAM L. NASH and H. KENNETH POWELL, as Councilmen,
*Appellees.*

**NOTICE TO APPEAL TO THE SUPREME COURT OF THE UNITED STATES**

NOTICE IS HEREBY GIVEN that NORTH RIDGE GENERAL HOSPITAL, INC., a Florida corporation, FORT LAUDERDALE HEALTH COMPLEX LTD., a limited partnership, and RICHARD K. INGLIS, Trustee, the Appellants above, hereby appeal to the SUPREME COURT OF THE UNITED STATES from the Final Judgment of the

Supreme Court of the State of Florida, affirming the lower court's granting of Appellee's Motion for Summary Judgment, entered in this action on June 7, 1979, Petition for Rehearing denied September 21, 1979.

THIS APPEAL is taken pursuant to 28 U.S.C., §1257(2).

HOUSTON, FAIRCLOTH, COOPER, EASTHOPE & KELLY
Mezzanine International Building
2455 East Sunrise Boulevard
Fort Lauderdale, FL 33304
Telephone: (305) 561-2700

By EARL FAIRCLOTH
EARL FAIRCLOTH

*Attorneys for Appellants*

HEREBY CERTIFY that a true copy of the foregoing NOTICE OF APPEAL was furnished by mail to GORDON G. COOPER, ESQ., and LEWIS D. HAINES, II, Attorneys for Appellees, 3650 N.E. 12th Avenue, Oakland Park, FL 33334, this 29th day of November, 1979.

EARL FAIRCLOTH
EARL FAIRCLOTH



## CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY certifies that a true copy of the foregoing Motion to Dismiss Appeal or in the alternative To Affirm Judgment was furnished by mail to Earl Faircloth, Esq., Attorney for Appellants, Houston, Faircloth, Cooper, Easthope and Kelly, Mezzanine International Building, 2455 East Sunrise Boulevard, Fort Lauderdale, Florida, 33304, this 8th day of January 1980.

LEWIS D. HAINES, II,
City Attorney for City of Oakland Park, Florida
3650 N.E. 12th Avenue
Oakland Park, Florida 33334
Telephone (305) 561-6169

By: Gordon G. Cooper
Assistant City Attorney

*Counsel for Appellees*